

Service Date: March 10, 1999

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF the Third Application)	UTILITY DIVISION
of U S WEST Communications, Inc.)	
for Approval of a Residential WinBack)	DOCKET NO. N99.2.20
Program Tariff)	ORDER NO. 6153
)	
IN THE MATTER OF the Application)	
of U S WEST Communications, Inc.)	DOCKET NO. N99.2.44
for Approval of a Business Competitive)	ORDER NO. 6154
Response WinBack Tariff)	

FINAL ORDERS

Background

U S WEST Communications, Inc. (U S West) has twice filed a residential "WinBack" tariff with the Public Service Commission (Commission), "to introduce a Competitive Response strategy for residential customers who have left U S West and have service with another local service provider." Each of these filings was rejected.¹ On February 1, 1999 U S West made a third residential WinBack filing, Tariff Transmittal 99-06, which corrects deficiencies identified in the previous filings, but which retains a provision that raises an issue under Montana law.² On February 22, 1999 U S West filed an initial business WinBack tariff, Tariff Transmittal 99-13.

Discussion

The third residential WinBack filing makes the promotion and incentives available for 12 months. Section 69-3-305(5)(a), MCA, reads in relevant part as follows: "A provider of regulated telecommunications service may offer, for a limited period of time, rebates, price reductions, or waivers of charges in conjunction with promotions, market trials, or other sales-related activities that are common business practices." (Emphasis added.)

¹ See Order No. 6068, Docket No. D97.12.243 (May 21, 1998) and Order No. 6098, Docket No. N98.8.186 (September 10, 1998).

² This issue was raised by the second WinBack filing, but was not addressed because the filing was rejected on other grounds. Order No. 6098, p.2.

In Order No. 6068 the Commission invited U S West to argue that this language does not apply to the WinBack filing. U S West has not so argued, and the Commission concludes that WinBack is a promotion subject to § 69-305(5)(a), MCA. The question, therefore, is whether 12 months is a "limited period of time" in the context of the business practices addressed in § 69-3-305(5)(a), MCA.

The Commission concludes that the legislature intended "limited period of time" in § 69-3-305(5)(a), MCA, to be defined by the common understanding, or "common business practices" of the activities authorized. The activities authorized generally fall into the category of "promotions," and the examples given in the statute are "rebates," "price reductions," "waivers of charges" and "market trials." The Commission finds that a 12-month duration for these kinds of activities is not a common business practice. Promotions commonly last for a few weeks or months.

The Federal Communications Commission appears to contemplate promotions of over 90 days, when it indicates that short term promotions of over 90 days must be offered for resale. 47 C.F.R. §51.613(a)(2)(i). In U S West's current filing WinBack is available for resale, so it does not necessarily have to be limited to 90 days.

The Commission finds, based on its understanding of "common business practices," that a "limited period of time" in § 69-3-305(5)(a) means no more than six months. Six months should be sufficient time for U S West to derive whatever economic benefit can be gained from a promotion. Extending a promotion beyond six months raises the question whether the basic tariffed rates should be reevaluated. If offered long enough a sales price becomes the price.

U S West's "Business Competitive Response WinBack" filing contains most, if not all, the defects of its initial residential WinBack filing. The business WinBack promotion is not available for resale and contains no time limit, two matters discussed in Order Nos. 6068, 6098 and this Order. U S West can refile business WinBack consistent with those Orders, or with argument that those Orders should not apply to business WinBack. Except for noting its obvious defects, the Commission has not reviewed the business WinBack filing. If U S West refiles business WinBack the Commission will conduct a complete review at that time.

Conclusions of Law

1. U S West is a public utility subject to the regulatory jurisdiction of the Montana Public Service Commission. Section 69-3-101(f), MCA.
2. U S West's proposed WinBack tariffs are subject to the approval of the Montana Public Service Commission.
3. U S West's Tariff Transmittal 99-06, Residential WinBack, is in violation of § 69-3-305(5)(a), MCA, as described above.
4. U S West's Tariff Transmittal 99-13, Business WinBack, is in violation of state law and, assuming U S West intends that the promotion last longer than 90 days, in violation of federal rule, all as described in this Order and Order Nos. 6068 and 6098.

Order

U S West's Tariff Transmittals 99-06 and 99-13 are not approved.

DONE AND DATED this 2nd day of March, 1999, by a vote of 4-1.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair, Dissenting

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

DISSENT OF COMMISSIONER McCaffree

During my six years as a public service commissioner, a “promotion” from a telecommunications provider was considered to be much less than one year. Indeed, it has been considered less than six months. A time limit for a “promotion” is not defined by law or rule; however, the Commission has discussed this issue during various other “promotion” filings. I believe U S West is stretching the limits of the definition purposefully to see just how much the Commission will give without having a full hearing.

It is because of this I voted no to this filing.

NANCY MC CAFFREE
Commissioner, District 2